

Applicant respectfully traverses the rejections under 102(e) and 103(a) on two grounds. First, Mascellaro does not have an interior surface that "substantially encloses" a flow channel, as required by claims 8 and 9 of the present application. Second, the Applicant can antedate the Mascellaro reference by proving invention prior to the effective date.

First, Mascellaro discloses "chines" to direct water and define a channel, and not a substantially enclosed flow channel. The Applicant's invention differs in that a substantial portion of the interior surface wraps around and closes in on itself to form an enclosed flow channel. Mascellaro does not do this at any point of his hull. All the elements of present claim must be present in the cited reference to sustain a rejection under 35 USC 102. Because Mascellaro does not have an enclosed flow channel, all the elements are not present, and a 102 rejection is not appropriate. On that basis alone, Applicant suggests that claim 8 is allowable.

Second, Applicant antedates the Mascellaro reference by providing a Rule 131 declaration, attached hereto, with a photocopy of the relevant pages of his laboratory notebook showing conception no later than 1/3/2000. MPEP 2136.05. As an initial matter, Applicant draws the Office's attention to the PCT filing date of 4/22/1999, which is before the effective date of the AIPA of 11/29/2000. Therefore, the prior version of 35 USC 102(e) applies. MPEP 2136. This prior version, set forth in MPEP 2136 reads as follows:

A person shall be entitled to a patent unless ... (e) the invention was described in a patent granted on an application for a patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Next, the Office's attention is drawn to the § 371 date on the Mascellaro patent, which is

11/6/2000. The Applicant conceived of the invention no later than 1/3/2000, as evidenced by the Rule 131 declaration. Therefore, the Mascellaro patent is not available as a reference against the present application 102(e) or 103(a) purposes. For this second reason, Applicant suggests that 102(e) and 103(a) rejections based on Mascellaro are not appropriate, and that claims 8 and 9 should be allowable.

Regarding claims 12 - 17 that were objected to, the Applicant suggests that they are now allowable since they depend from claim 9. For the foregoing reasons, the Applicant respectfully requests reconsideration of the rejections and objection to the claims.

Respectfully submitted,



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